

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



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460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

## MEMORANDUM

TN REGULATORY AUTHORITY  
DOCKET ROOM

TO: Chairman Sara Kyle  
Director Pat Miller  
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services Division  
Ed Mimms, Manager, Do Not Call Program  
Lynn Questell, Counsel

DATE: October 3, 2002

SUBJECT: Settlement with Michael Adkins, D/B/A Kirby Vacuum of Kingsport  
Docket No. 02-00325

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Michael Adkins D/B/A Kirby Vacuum of Kingsport (referred hereafter to as "Mr. Adkins") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA §65-4-401 *et seq.* Mr. Adkins has provided the Staff with an affidavit stating that he has ceased the use of telemarketers in his business operations.

Two (2) separate complaints have been registered against Mr. Adkins with the Authority alleging that the company violated TCA §65-4-401 *et seq.* This Settlement requires Mr. Adkins to make a payment of \$4,800 to the Authority along with assurances from Mr. Adkins that he will fully comply with applicable state law. The terms of this Settlement require Mr. Adkins to pay the \$1,000 to the Authority within five (5) days of Authority ratification of the Settlement with the remaining eight (8) payments of five hundred dollars (\$500.00) for the next seven (7) months and a final payment of three hundred dollars (\$300.00). A representative for Mr. Adkins will be available telephonically at the October 21, 2002 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Mr. Adkins.

Staff submits the attached Settlement Agreement for your deliberation at the October 21, 2002 Authority Conference.

cc: Director Deborah Taylor Tate  
Richard Collier, General Counsel  
Richard Herthneck, Kirby Counsel

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

## NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.  
CODE ANN. §65-4-401 *et seq.*, DO-NOT-  
CALL SALES SOLICITATION LAW,  
AND RULES OF TENNESSEE  
REGULATORY AUTHORITY, CHAPTER  
1220-4-11, BY:

MICHAEL ADKINS, D/B/A KIRBY  
VACUUM OF KINGSFORT, MIDWAY  
KIRBY, G & C SYSTEMS AND KIRBY  
CENTER

DOCKET NO. 02-00325

DO-NOT-CALL T02-00044  
PROGRAM T02-00084  
FILE NUMBERS

## SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Michael Adkins d/b/a Kirby Vacuum of Kingsport, Midway Kirby, G & C Systems and Kirby Center ("Kirby Vacuum" or the "Company"). This Settlement Agreement pertains to two (2) complaints received by the CSD, alleging that Kirby Vacuum violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07. This Settlement Agreement is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4- 405(d) requires that

persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint on January 25, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Kirby Rug Cleaning Service on January 21, 2002. The CSD provided Mr. Adkins with notice of this complaint on January 31, 2002. The CSD received a second complaint on February 14, 2002, alleging that a person acting on behalf of Kirby made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on February 1, 2002. The CSD provided Mr. Adkins with notice of this complaint on March 11, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Kirby Vacuum in this proceeding is six thousand dollars (\$6,000), arising from the two (2) telephone solicitations and the Company's failure to register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Kirby Vacuum is located in Kingsport, Tennessee. It employs two (2) persons in the state of Tennessee. During the investigation of the complaints, Kirby Vacuum contacted the CSD and expressed an interest in resolving this matter. In addition, Kirby Vacuum registered with the TRA as a telephone solicitor on February 1, 2002. CSD has received no additional complaints from Tennessee consumers arising after February 1, 2002.

After Kirby Vacuum's registration in the Do-Not-Call program expired on June 30, 2002, Kirby Vacuum submitted an affidavit, attached hereto as Exhibit A, stating that it has ceased and will no longer engage in telephone solicitation of residential consumers in the State of Tennessee.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Kirby Vacuum agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

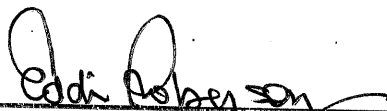
1. Kirby Vacuum admits that the two (2) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Kirby Vacuum has come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Kirby Vacuum contacted CSD and expressed an interest in resolving this matter. In addition, Kirby Vacuum registered with the TRA as a telephone solicitor on February 1, 2002. After Kirby Vacuum's registration in the Do-Not-Call program expired on June 30, 2002, Kirby Vacuum submitted an affidavit, attached hereto as Exhibit A, stating that it has ceased and will no longer engage in telephone solicitation of residential consumers in the State of Tennessee.
3. Kirby Vacuum agrees to pay a total of four thousand eight hundred dollars (\$4,800.00) in settlement of these complaints and agrees to remit the amount of one thousand dollars (\$1,000.00) to the TRA Office of the Chairman no later than five (5) days after the date the Directors of the TRA approve this Settlement Agreement.<sup>1</sup> The remaining eight (8)

<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-00325.

installments, consisting of five hundred dollars (\$500.00) each for the next seven (7) consecutive months and a final payment of three hundred dollars (\$300.00), shall be remitted to the TRA no later than the first business day of each month for the next three (3) consecutive months. Upon payment of the amount of four thousand eight hundred dollars (\$4,800.00) in compliance with the terms and conditions of this Settlement Agreement, Kirby Vacuum is excused from further proceedings in this matter.

4. Kirby Vacuum agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Kirby Vacuum agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Kirby Vacuum fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Kirby Vacuum shall pay any and all costs incurred in enforcing the Settlement Agreement.
7. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

8. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

10/4/02  
Date



Signature

Mike Adkins

Print Name

DISTRIBUTOR

Print Title

9/5/02  
Date

Adkins, 14

STATE OF TENNESSEE )

COUNTY OF SULLIVAN )

) SS:

AFFIDAVIT

The undersigned, Mike Adkins, being first duly sworn according to law, deposes and states as follows:

1. I am the principal of Kirby Vacuum of Kingsport also doing business as Adkins Distributing, an independent distributor of Kirby cleaning systems located at 1001 Royal Pines Plaza, Kingsport, Tennessee 37663 .
2. Following my meeting with Ed Mimms, and others, in Nashville, March 21, 2002, it was my understanding that my distributorship had to comply with the Tennessee No-Call Registry since I was using telemarketers to set appointments.
3. My distributorship ceased the use of telemarketers in my business operations for purposes of contacting potential consumers by telephone following the March 21, 2002 meeting

FURTHER AFFIANT SAYETH NAUGHT.

Mike Adkins  
Mike Adkins

2002. SWORN TO BEFORE ME and subscribed in my presence this 12<sup>th</sup> day of August,

Nanci Noel-Smith  
Notary Public

My Commission Expires January 15, 2006.